

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

ROBERT PALTROW

Criminal Number 14-9

**POSITION OF DEFENDANT ROBERT PALTROW
WITH RESPECT TO SENTENCING FACTORS**

Defendant Robert Paltrow, by and through his counsel, Mark Sheppard and Montgomery McCracken, submits this Position of Defendant with Respect to Sentencing Factors under Fed. R. Crim. P. 32(f), and United States Sentence Guideline §6A1.2(b), in accordance with the Court's November 7, 2014 scheduling Order.

Consistent with that Order, Mr. Paltrow will provide a supplemental memorandum with respect to the factors to be considered in Defendant's sentencing, and will provide a copy of the supplemental sentencing memorandum to the Probation Office.

I. Objections to Pre-Sentence Report

Mr. Paltrow has no objection to the guideline calculation, description of the offense conduct or narrative of personal and family history portions of the Pre-Sentence Report ("PSR"). There have been certain changes in Mr. Paltrow's financial condition as set forth in paragraph 51 of the PSR. These changes will be provided to the Probation Officer and counsel to be included in an addendum to the PSR.

II. Mr. Paltrow's Anticipated Grounds for Departure or Variance

Mr. Paltrow believes that the following factors present grounds for departure from and/or for imposition of sentence below the applicable sentencing guideline range.

A. Acceptance of Responsibility

Mr. Paltrow's acceptance of responsibility has been extraordinary. Specifically, Mr. Paltrow quickly accepted responsibility for his conduct by (1) fully cooperating with the government's criminal investigation and providing significant inculpatory information not known to the government. He has fully paid all tax liability, interest and penalties assessed for the years at issue. In addition, he has endorsed and participated in the process of preparing and filing amended returns for tax years 2009 through 2012 (without audit or enforcement activity) and will have paid all income tax liability for those years by the time of sentencing. In addition, he, was instrumental in insuring that NAC paid its tax liabilities arising from the IRS investigation, and has done everything in his power to ensure that NAC continues and that its employees were not left jobless by voluntarily removing himself from NAC and agreeing to suspend NAC's obligation to fund his pension.

B. Mr. Paltrow's Advanced Age

Mr. Paltrow is 74 years old. If he is sentenced to incarceration, he will be among a very small percentage of federal prisoners over the age of 65. Under the advisory Sentencing Guidelines, age is a relevant factor for determining whether a downward departure is warranted. *See* U.S.S.G. § 5H.1 ("Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient and less costly than incarceration."). Similarly, advanced age and the impact that incarceration has upon elderly defendants have long been considered relevant factors in determining whether a downward variance may be warranted under 18 U.S.C. §3553(a).

C. Charitable Works & Community Activities

Mr. Paltrow has a long and consistent history of community involvement and charitable activity.

D. Mr. Paltrow's Personal History & Characteristics

Mr. Paltrow's personal history and characteristics, including but not limited to his age, strong family ties, and lack of prior involvement with the criminal justice system, also support a significant downward variance. Mr. Paltrow is an excellent father and grandfather, who provides significant support to his large, close-knit family, and has been instrumental in helping them weather numerous family losses and crises. He worked hard to build and maintain the NAC business, which did not only benefit him and his family, but benefitted the Duncansville, PA community, as well.

E. Unwarranted Sentencing Disparity

A sentence of imprisonment in this case would result in an unwarranted sentencing disparity among defendants who have been found guilty of similar conduct in this case, as well as among others who have engaged in similar conduct in this District and Circuit.

F. The Offense Level Overstates the Seriousness of the Offense

The offense level in this case overstates the seriousness of the offense.

G. Collateral Consequences of Prosecution & Conviction

As a result of this prosecution, Mr. Paltrow has been, and will be, subject to substantial sanctions beyond any term of imprisonment, including large financial penalties, the loss of his position with the company he was instrumental in building, and damage to his reputation. These significant consequences warrant departure and/or variance from the sentencing guidelines range.

In accordance with the Court's Order, Mr. Paltrow will provide a supplemental Sentencing Memorandum, which will set forth in greater detail the reasons and support for a departure and/or variance from the applicable sentencing guidelines range.

CERTIFICATION

Defendant's counsel certifies that we have worked in good faith with the government and the U.S. Probation Office to resolve any disputed matters with respect to the Presentencing Report.

Dated: December 23, 2014

Respectfully Submitted,

/s/ Mark B. Sheppard

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CERTIFICATE OF SERVICE

I, Mark B. Sheppard, hereby certify that on this date, the foregoing Position of Defendant Robert Paltrow with Respect to Sentencing Factors was filed and served by ECF and electronic mail on the following:

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Respectfully Submitted,

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